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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,123	07/25/2003	Donald E. Weder	8403.852	3896

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EXAMINER

WEEKS, GLORIA R

ART UNIT PAPER NUMBER

3721

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/627,123

Applicant(s)

WEDER, DONALD E. 

Examiner

Gloria R Weeks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 7-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-10 is/are rejected.
- 7) ☐ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Specification***

1. The abstract of the disclosure is objected to because it states Applicant's invention is drawn to both a method and apparatus, whereas, Applicant's invention as claimed is only drawn to an apparatus. Correction is required. See MPEP § 608.01(b).

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 and 8 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Straeter (USPN 5,921,060).

In reference to claims 1-4, 8 and 9, Straeter discloses an apparatus for forming and securing a decorative pleated cover (12) about an outer peripheral surface of a pot (14), the apparatus comprising: a frame assembly (40, 42); a platform (34) connected to the frame assembly (40, 42) such that the platform (34) extends outwardly from the frame assembly (40, 42); a pleating assembly (30, 32) supported on an upper surface of the platform (34) such that the pleating assembly (30, 32) extends upwardly from the upper surface of the platform (34), the pleating assembly (30, 32) comprising a lower body portion (32) and a plurality of spatially disposed pleat forming members (30; figure 3), the pleat forming members (30) disposed about the perimeter of the lower body portion (32) and extending in an upwardly direction therefrom, the pleat forming members (30) cooperating with the lower body portion (32) of the pleating assembly to define a pot receiving opening therein, the pot receiving opening sized and configured to receive (figures 1 & 2) at least a lower portion of a pot (14); and a

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banding assembly (28) connected to the platform (36) about the pleating assembly (30, 32), the banding assembly supporting at least one band (16) thereon.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 7 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Straeter (USPN 5,921,060) in view of Weder et al. (USPN 5,073,161).

Regarding claims 7 and 10, Straeter discloses a pleating assembly (30, 32) comprising a lower body portion (32) and a plurality of spatially disposed pleat forming members (30; figure 3, but does not disclose the use of scalloped shaped portions. Weder et al. teaches an apparatus for forming a decorative pleated cover comprising a pleating assembly having pleat forming members (86) and scalloped shaped portions (110) cooperating in the formation of pleats in a decorative cover. It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the pleating assembly of Straeter to include the scalloped portion of Weder for the purpose of providing additional forming means in the pleating assembly.

***Allowable Subject Matter***

6. Claims 5-6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The art of record considered as a whole, alone or in combination, neither anticipates nor renders obvious an apparatus for forming a decorative pleated cover comprising a frame assembly having a base and an upright member; a platform connected to the frame assembly; and a pleating assembly supported on the platform, wherein the platform is adjustably connected to the upright member of the frame assembly such that the distance between the platform and the base of the frame assembly can be varied.

The prior art of record discloses apparatuses having a pleating assembly and a frame assembly connected to an adjustable platform, however, the adjustable platform does not support the pleating assembly, as claimed by Applicant's invention.

### *Conclusion*

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Refer to attachment for notice of references cited and recommended for consideration based on their disclosure of limitations of the claimed invention. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gloria R Weeks whose telephone number is (571) 272-4473. The examiner can normally be reached on 7:30 am - 6:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott A Smith can be reached on (571) 272-4469. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



grw

December 8, 2004

Gloria R Weeks  
Examiner  
Art Unit 3721



SCOTT A. SMITH  
PRIMARY EXAMINER